IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1736 of 2004
WITH
LETTERS PATENT APPEAL No. 1869 of 2004
WITH
CIVIL APPLICATION Nos. 7092, 8114 of 2004
In
SPECIAL CIVIL APPLICATION No. 6260 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PANCHMAHAL VADODARA GRAMIN BANK & 2 - Appellant(s)
Versus
D M PARMAR - Defendant(s)

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Appearance :
MR DARSHAN M PARIKH for Petitioner No(s).: 1,2,3.
MR KB PUJARA for Respondent No(s).: 1.

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CORAM :	**HON'BLE MR.JUSTICE A.R.DAVE**

	and
	HON'BLE MR.JUSTICE K.A.PUJ

Date : 05/08/2005

COMMON ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE K.A.PUJ)

1. These two Letters Patent Appeals are arising out of the same judgment and order of the Learned Single Judge of this Court (Coram :- K.S. Jhaveri, J.) passed on 13.08.2004 in Special Civil Application No. 6260 of 2001 and hence, both these appeals are disposed of by this common judgment.

2. Letters Patent Appeal No. 1736 of 2004 is filed by the appellant – original respondent Bank in the writ petition challenging the judgment and order dated 13.08.2004 partly allowing the petition and setting aside the order of the Disciplinary Authority confirmed by the Appellate Authority in dismissing the original petitioner from service and directing the

original respondent Bank to reconsider the issue and quantum of punishment and further directing to impose any penalty upon the original petitioner except the penalty of dismissal, removal or termination from service.

3. Letters Patent Appeal No. 1869 of 2004 is filed by the original petitioner, namely, D.M. Parmar challenging the judgment and order dated 1308.2004 remanding the matter to the concerned authority for passing appropriate order with respect to the quantum of punishment with further direction that the authority may impose any penalty upon the petitioner except penalty of dismissal, removal or termination from service and further directing that it would be open to the said authority to consider the period between the date of dismissal and date of actual reinstatement as “Leave Without Pay” and that the petitioner shall not be entitled to salary or other allowances between the date of dismissal and the date of actual effective

reinstatement.

4. At the joint request of the parties, both the appeals are heard together for final disposal.

5. Mr. Darshan M. Parikh, learned advocate appeared for the appellant i.e. Panchmahal Vadodara Gramin Bank in Letters Patent Appeal No. 1736 of 2004 and for the respondent in Letters Patent Appeal No. 1869 of 2004. Mr. K.B. Pujara, learned advocate appeared for the respondent in Letters Patent Appeal No. 1736 of 2004 and for the appellant in Letters Patent Appeal No. 1869 of 2004.

6. The factual matrix of the case is that the original petitioner was an Officer of the respondent Bank. While he was posted as a Branch Manager with the Chundadi Branch of the Bank, he was alleged to have committed certain acts of omission and commission because of which there was a loss of about Rs. 1 Crore to the

Bank. The basic allegations which were leveled against the petitioner were that the petitioner had granted advances or renewed the same without proper security or against fraudulent securities. Various allegations of serious irregularities in granting advances were made. The advances have become doubtful and non-performing assets and inquiry was, therefore, held against the petitioner and after considering the whole evidence produced before the Inquiry Officer, the Inquiry Officer came to the conclusion that all the charges leveled against the petitioner were proved.

7. The petitioner was thereafter sent the copy of the Inquiry Report by letter dated 4.11.2000 and he was called upon to make representation if he so desired, against the findings of the Inquiry Officer. By a letter dated 06.11.2000, the petitioner was informed that a meeting for this purpose was fixed on 22.11.2000 before the Chairman and Disciplinary Authority. The said

hearing was held on 22.11.2000. The details which were submitted by the petitioner were taken into consideration. The petitioner had submitted that he had no experience of a large branch and he had committed all the mistakes. He had not realised the seriousness of his mistakes and had asked for forgiveness for his acts of commission and omission. He did not want to make any further written or oral submissions. Thus, the petitioner had accepted the charges and findings of the Inquiry Officer and nothing further remained in so far as that particular aspect was concerned.

8. Later on, the petitioner was issued a show-cause notice on 29.11.2000 calling upon the petitioner to make submissions and show cause as to why punishment should not be imposed upon the petitioner. The said hearing was fixed on 06.12.2000. The petitioner attended to the said hearing and made his submissions, inter alia, admitting his guilt. The petitioner was

inquired as to why penalty of dismissal with immediate effect should not be imposed upon him. The petitioner responded by saying that he had worked at the Branch only for the short period and that he had no experience of a large branch due to which the acts of commission and omission took place. Henceforth, he would act honestly and diligently and he had requested for some lesser punishment. Thus, the petitioner had no grievance against the inquiry or the findings against the penalty. The Disciplinary Authority has, however after considering the entire facts and circumstances of the case as well as the evidence on record imposed the penalty of dismissal with immediate effect by an order dated 06.12.2000.

9. Being aggrieved by the said order, the petitioner preferred Departmental Appeal to the Board of Directors which was fixed for hearing on 17.02.2001 and the same was dismissed.

10. Being further aggrieved by the said order of the Appellate Authority, the petitioner preferred Special Civil Application No. 6260 of 2001 before this Court and during the course of hearing of the said petition, the petitioner made a submission that he would like to make a fresh representation to the Board of Directors to reconsider their decision and in view of the same, the petition came to be disposed of as withdrawn to enable the petitioner to make a representation. However, liberty was reserved to revive the said petition by filing a note, if the representation was rejected by the Board of Directors.

11. The petitioner thereafter made representation to the Board of Directors which was duly considered and was rejected. The constitution of the Board of Directors have undergone a major change and all the Directors (except the nominee Director from NABARD) were changed. Thus the Board of Directors which considered the Departmental

Appeal and the Board which considered the petitioner's representation were different. The petition came to be revived thereafter and came to be decided vide judgment and order dated 13.08.2004 whereby the order of punishment of dismissal was set aside and the respondent Bank was directed to reconsider the question of penalty afresh and to impose a penalty short of dismissal, removal or termination.

12. It is this order of the Learned Single Judge which is under challenge in the present two appeals.

13. Mr. Darshan M. Parikh, learned advocate appearing for the original respondent Bank has submitted that the sheer negligence and carelessness of the petitioner has caused a loss to the extent of Rs. 1 Crore to the respondent Bank. It was the duty of the petitioner to act honestly and diligently and to safeguard the interest of the Bank. Instead of doing that, he

had acted to the detriment of the interest of the respondent Bank and such acts could not be tolerated in any banking financial institution.

14. He has further submitted that the petitioner had accepted his guilt at the time of hearing before the Disciplinary Authority while making representations against the findings of the Inquiry Report and the proposed penalty. The charges leveled against the petitioner were of very serious and grave nature and have caused a tremendous damage to the respondent Bank and looking to such serious nature of the charges, no leniency could have been shown to the petitioner and the penalty imposed on the petitioner dismissing him from service was quite legal, proper and justified. Once having come to the categorical conclusion by the Inquiry Officer on the basis of the material produced before him for recording the findings on the charges leveled against the petitioner and that a reasonable opportunity was afforded to the

petitioner, the Learned Single Judge could not have come to the conclusion that the penalty imposed is disproportionate to the charges leveled against him. Mr. Parikh has further submitted that while interfering with the order of the Disciplinary Authority as well as Appellate Authority on the ground that there was total non-application of mind with respect to quantum of penalty, the Learned Single Judge has completely ignored the observations made and findings arrived at in this order.

15. In support of his submissions, Mr. Darshan Parikh relied on the decision of Hon'ble Supreme Court in the case of **Union of India & Another V/s. G. Ganayutham, 1997 (7) S.C.C. 463** wherein while summarizing the current position regarding proportionality in administrative law in England and in India, it is observed that to judge the validity of an administrative order or statutory discretion, normally, the Wednesbury test is to be applied to find out if the decision was

illegal or suffered from procedural improprieties or was one which no sensible decision maker could, on the material before him and within the framework of the law, have arrived at. The Court has also observed that the Court would not however go into the correctness of the choice made by the Administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the Administrator. Mr. Parikh has submitted that the petitioner has admitted his guilt and the authorities have considered all the necessary materials and evidence produced on record. Charges leveled and proved were of very serious nature and hence, the punishment of dismissal from service was imposed which could not be said to be disproportionate to the charges leveled against the petitioner. The Learned Single Judge has nowhere mentioned as to how the punishment of dismissal imposed is disproportionate to the charges leveled and proved against the

petitioner. The whole foundation was erroneous in this wise that both the authorities have duly considered the entire facts and circumstances of the case and the explanations tendered by the petitioner and thereafter, the decision was taken which was confirmed by the Appellate Authority and the same decision was also approved by the Reviewing Authority. He has, therefore, submitted that the Learned Single Judge should have confirmed the punishment of the dismissal without interfering in the concurrent findings arrived at by the Disciplinary Authority as well as Appellate Authority.

16. Mr. K.B. Pujara, learned advocate appearing for the original petitioner has submitted that gross injustice has been done to the petitioner by the Disciplinary Authority as well as by the Appellate Authority and that the Learned Single Judge though, was convinced about the fact that the penalty imposed was disproportionate to the

charges leveled, has erroneously remanded the matter to the concerned authorities and denied back wages for the period during which dismissal order remained in force. The petitioner belongs to Schedule Caste. He was selected for the post of Officer by the Banking Service Regulation Board and was appointed in the respondent Bank on 16.04.1988. The petitioner was always discharging his duties honestly and diligently. The alleged acts of omission and commission were done during 25.03.1996 to 21.06.1997 (for a period of less than 15 months). While he was working as a Manager at Chundadi Branch, he was asked to submit his explanation by letter dated 20.05.1998 which was duly replied to by the petitioner on 30.05.1998 and 30.07.1998. The petitioner denied all the allegations made against him and explained all the circumstances. However, after about 09 months, Charge-sheet dated 26.04.1999 was issued verbatim reiterating the same allegations as were made in the first letter dated 20.05.1998. The petitioner replied

to the Charge-sheet and denied the allegations. Thereafter, on or about after three months, the Charge-sheet was ordered to be corrected/amended by letter dated 02.08.1999 whereby inter alia, Point No. 78 of the Charge-sheet was deleted. Mr. Pujara has further submitted that before the Inquiry Officer, the petitioner demanded certain information/documents for the purpose of his defence by letter dated 30.11.1999 as soon as the inquiry was started. However, the Presenting Officer has denied the documents and information by his letter dated 14.12.1999 thereby causing serious prejudice to the petitioner in his defence.

17. Mr. Pujara has further submitted that the whole inquiry proceeded in breach of principles of natural justice and in breach of Panchmahal Vadodara Gramin Bank Staff Service Regulations, 1983. The documents relied upon by the Bank were not proved in the course of inquiry. After the so-called evidence of the Bank was over, the

petitioner was not even called upon to produce his witnesses and straight away both the sides were asked to submit their written arguments to the Inquiry Officer. The petitioner was furnished with a copy of the Inquiry Report of October, 2000 along with the letter dated 04.11.2000 wherein some of the charges were held proved. At the personal hearing on 22.11.2000, the petitioner fully explained and satisfied the Disciplinary Authority that he was completely innocent and the Disciplinary Authority also orally assured the petitioner that he would not be punished. However, by an order dated 29.11.2000, the Disciplinary Authority was agreeing with the findings of the Inquiry Officer and that the petitioner would be given hearing about the proposed punishment on 06.12.2000. In fact, no punishment was proposed and, therefore, no hearing on proposed punishment was taken place and straight away the order of punishment of dismissal with immediate effect was passed on 06.12.2000. The

petitioner's appeal dated 26.12.2000 came to be rejected as per Bank's letter dated 27.02.2001 in which it was stated that the Appellate Authority i.e. Board of Directors in its meeting held on 17.02.2001 confirmed the order of Disciplinary Authority dated 06.12.2000 and rejected the appeal. The Appellate Authority has not given any personal hearing to the petitioner despite his specific request for the same.

18. Mr. Pujara has further submitted that the Disciplinary Authority as well as the Appellate Authority have failed to appreciate that the inquiry proceeded against the petitioner was in breach of principles of natural justice and Staff Service Regulations and that the information and documents required by the petitioner were not furnished to him and that the petitioner who remained at Chundadi Branch for only 15 months had not sanctioned any new loans to any borrowers, but he had merely

disbursed or renewed the loans which were sanctioned during the tenure of his predecessor Mr. L.K. Parmar who functioned as Manager of the said Branch for a long time from 30.10.1990 to 11.04.1996 and that even such disbursement and renewals were also made as per the instructions of the then Chairman of the Bank, Mr. Bhagchandani and that no hearing at all was given on the aspect of the proposed punishment and mechanically and without application of mind, both the authorities passed the impugned orders which are perverse and contrary to the material on record leading to economic death of the petitioner and his family. Mr. Pujara has submitted that it is at this age and stage, the petitioner who belongs to Schedule Caste has no scope for any alternative employment.

19. Mr. Pujara has further submitted that the judgment and order passed by the Learned Single Judge in so far as it has been directed that the matter was remanded to the concerned authority

for passing appropriate order with respect to quantum of punishment and in so far as it is ordered that it would be open to the said authority to consider the period between the date of dismissal and date of actual reinstatement as “Leave Without Pay” and in so far as the petitioner should not get any back wages between date of dismissal and date of actual effective reinstatement is patently illegal, erroneous, improper, unjust and inequitable, unfair, bad in law, null and void and to that extent partly the impugned judgment and order is liable to be quashed and set aside. Mr. Pujara has further submitted that once the Learned Single Judge having come to the conclusion that the penalty of dismissal imposed upon the petitioner is excessive and harsh and that a lighter punishment should have been awarded and in view of the law laid down by the Hon'ble Supreme Court as well as by this Court. The Learned Single Judge ought to have appreciated that denial of back wages for the

intervening period between date of dismissal and date of reinstatement which is about 4 years is itself a grave punishment and, therefore, no further punishment can be imposed on the petitioner. Alternatively, Mr. Pujara has submitted that Learned Single Judge should have directed reinstatement with all back wages and consequential benefits and ought to have imposed any one of the minor penalties in the judgment itself. The loss of salary for the period of four years is itself a very grave and harsh punishment for poor family of the petitioner. Mr. Pujara has further submitted that there has no charge of misappropriation and that there was no malice behind any of his actions.

20. In support of his submission, Mr. Pujara has relied on the decision of the Hon'ble Supreme Court in the case of **Kailash Nath Gupta V/s. Enquiry Officer, Allahabad Bank and Others, 2003 AIR SCW 1813** wherein the Hon'ble Supreme Court has held that one thing is clear that the power

of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. The Supreme Court has further observed that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above was that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed as negligence to warrant the

extreme punishment of dismissal from service.

21. Mr. Pujara has further relied on the decision of Division Bench Judgment of this Court in the case of **Jagdishchandra Maganlal Trivedi V/s. State Bank of India, 2004 (2) G.L.H. 514** wherein after discussing the entire case law on the subject and while reversing the order passed by the Learned Single Judge, it was observed that the whole approach of the Learned Single Judge is technical, ignoring the substance of the matter. The Learned Single Judge ought to have examined the matter in light of the proportionality whether it has been pressed into service or not by the parties. The Court is not precluded from considering the matter with full application of mind and should not have confined only to the submissions made by the parties. If the Court feels that further merits are required to be examined for doing complete justice, then, the Court should not stop and examine further merits of the matter for doing

complete justice between the parties so that the dispute may reach the finality in all respects. The Court has further observed that the misconduct is not proved against the appellant and, therefore, the punishment imposed by the Appellate Authority is not sustainable and that part of the order imposing punishment of reversion against the appellant is required to be quashed.

22. A decision of the Learned Single Judge of this Court in the case of **Vinodbhai V. Gujarati V/s. G.S. Dothre in Special Civil Application No. 1209 of 1992 decided on 08.12.2000** is also cited before the Court wherein the findings of the Inquiry Officer and of the Disciplinary Authority, holding the petitioner guilty for the charges leveled against him are not disturbed. However, the order passed by the Disciplinary Authority dismissing the petitioner from the service of the respondent Bank dated 19.01.1990 and confirmed in appeal and in review are

quashed and set aside. The matter was remanded to the Reviewing Authority of the respondent Bank for passing appropriate order with respect to the quantum of punishment. The said authority was given liberty to decide and impose any penalty upon the petitioner except the penalty of dismissal, removal or termination of service. The Court has further observed that it would be open to the said authority to consider the period between the date of dismissal and the date of actual reinstatement as “Leave Without Pay”. The Court has also directed that the petitioner shall be reinstated in his original cadre and he shall be appropriately appointed in the same cadre at any place on or before the particular date and the petitioner shall not be entitled to salary or other allowances between the date of dismissal and the date of actual effective reinstatement.

23. A decision of this Court in the case of **Yakub Ahmed Patel V/s. Ahmedabad Municipal Corporation**

and another, 1997 (1) G.L.H. 591 is also cited which lays down the proposition that the penalty imposed upon the delinquent was shockingly harsh and disproportionate. It is doubtful whether a reasonable employer would have thrown such a person out of service. Even if the conduct of the delinquent can be considered to be such that he was not required to be continued in service, in the facts and circumstances narrated above, the order of compulsory retirement would have met the ends of justice and that would have achieved the object of keeping the delinquent out of service and at the same time, would not have deprived the delinquent of the retiral benefits accruing after 32 years of service.

24. A decision of this Court in the case of **Narayan S. Shinde V/s. Union of India & Others, 1997 (1) G.L.H. 664** is also cited before the Court wherein the Court has observed that whether this Court can decide that with what penalty, the penalty of dismissal should be substituted. The

Court has referred to the decision of the Hon'ble Supreme Court in the case of B.C. Chaturvedi V/s. Union of India, reported in JT 1995 (8) S.C. 65 wherein it is held that in such matters, normally the matter should be remitted to the Appellate Authority to go on this question and only in extreme cases, as illustrated, this Court should go on this question itself. The Court however considered it appropriate in the said case to follow the first course and the matter was remitted to the Appellate Authority to decide what appropriate penalty should be given to the petitioner for proved negligence.

25. The Court's attention is also drawn to the Division Bench judgment of this Court in **Letters Patent Appeal No. 1049 of 2002 in the case of M.B. Gandhi, President V/s. Chandrakant Ramanlal Pandya decided on 28.10.2002** wherein, while confirming the order of the Learned Single Judge, the Division Bench has observed that it

has gone through the charges alleged to have been proved against the respondent. No doubt, the Tribunal has not recorded that the punishment imposed shocks the conscience of the Tribunal, but the Court also found that the punishment of dismissal of the respondent No. 1 was disproportionate. The Court has, therefore, held that the Tribunal has rightly substituted the punishment by moulding it into a monetary punishment and that has been confirmed by the Learned Single Judge. The Court has, therefore, did not find any good reason calling for interference with the judgment of the Learned Single Judge and the appeal was accordingly dismissed at the threshold.

26. After having heard learned advocates appearing for the respective parties and after having gone through the facts stated, averments made in the respective appeals as well as the petition and submissions and contentions raised before the Court and after perusing the relevant documents

which are produced on record of this Court and after having taken into consideration the authorities cited and after having minutely examined the impugned judgment of the Learned Single Judge, we are of the view that the impugned order of the Learned Single Judge does not call for any interference at our end. The Learned Single Judge has analyzed the facts in their proper perspective and his finding is based on the facts found and on that factual matrix, the law is correctly applied. There is no denial of the fact that certain charges are leveled against the petitioner and those charges have been also proved. However, there are serious disputes in respect of the justification of penalty imposed. It appears that no specific opportunity has been given to the petitioner before imposing the penalty. Even the Appellate Authority has also not given any opportunity and in a mechanical manner confirmed the penalty of dismissal of the petitioner from service. The question of dis-proportionality was neither

taken into consideration by the Disciplinary Authority nor by the Appellate Authority. There was no justification at any stage as to why the penalty of dismissal from service is imposed on the petitioner and that too in the background that the petitioner's actual involvement was not found. There was no malafide intention of committing any fraud or misappropriating the amount. There was no such allegation to this effect. It is also an admitted position that the petitioner's services at that particular Branch was only for 15 months and advances were not made by him. He has simply renewed or disbursed the amount and that too under the instructions of his higher ups. In such a situation, it is too harsh to throw the entire burden on the petitioner and arrive at a conclusion that the Bank has suffered loss of Rs. 1 Crore only because of the negligence and carelessness of the petitioner. It is a fit case where the question of proportionality can certainly be looked into. The Learned Single

Judge has rightly done this. After considering the entire case law on the subject which is referred to hereinabove he has come to the conclusion that the penalty of dismissal from service imposed upon the petitioner is too harsh and it is absolutely disproportionate to the charges leveled against him. Instead of deciding the penalty by himself, he has left it to the discretion of the concerned authorities and remanded the matter back. This direction of the Learned Single Judge is also based on the binding decision of the Hon'ble Supreme Court. Out of two courses, if a particular course is adopted by the Learned Single Judge, it cannot be said that it is either perverse or unreasonable. Even the Division Bench of this Court has earlier confirmed the order of the Learned Single Judge whereby the Tribunal has substituted the penalty and that decision has been confirmed by the Learned Single Judge. The Learned Single Judge has also taken into consideration the aspect that the petitioner has

not worked from the date of dismissal till the date of actual reinstatement and for this purpose, he has rightly directed the authority not to pay any wages for this period. This absence may not come in the way of the petitioner and hence, he has also directed the authorities to treat this period as “Leave Without Pay”.

27. Taking over all view of the matter and considering the entire case law on the subject, the decision taken by the Learned Single Judge is absolutely in accordance with the law. We do not find any infirmity in the said decision while exercising our powers under Clause 15 of the Letters Patent.

28. We,therefore, dismiss both these appeals without any order as to costs.

29. In view of the dismissal of appeals, Civil Application Nos. 7092 of 2004 & 8114 of 2004 do

not survive and they are accordingly disposed of.

[A.R. Dave, J.]

[K.A. PUJ, J.]

Savariya